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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,441	03/24/2006	Arjang Agahi	KEL01 P-148	7674
28101	7590	11/26/2008	EXAMINER	
VAN DYKE, GARDNER, LINN & BURKHART, LLP			PHILLIPS, FORREST M	
SUITE 207				
2851 CHARLEVOIX DRIVE, S.E.			ART UNIT	PAPER NUMBER
GRAND RAPIDS, MI 49546			2837	
			MAIL DATE	DELIVERY MODE
			11/26/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/573,441	AGAHI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	FORREST M. PHILLIPS	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 March 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-27 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 24 March 2006 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/24/06</u> .   | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the Resilient biasing means arranged to urge said magazine in a second direction must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 21-22, and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Stratton (US5437286).

With respect to claim 21 Stratton discloses a cover device (00 in figures 1a and 1c ) wherein the cover device comprises a frame (300 in figure 2b) and a membrane (200 in figure 1a see also figure 4), the cover device being actuatable from a first state in which an outer portion of the membrane is seated on an outer surface of the frame (the outer portion of the membrane includes the ring 201F in figure 2a and is on the outer surface of the frame, including the curved channel like portion) such that the frame hold the membrane in a generally deployed state, and a second state in which the outer portion of the membrane is located generally inwardly of its seated position (wherein the ring is smaller in diameter once it is donned by the user refer to figure 3a for respective diameters).

With respect to claim 22 Stratton further discloses wherein the outer portion of the membrane comprises a peripheral ring (201 in figure 3a).

With respect to claim 24 Stratton further discloses wherein at least the outer portion of the membrane is formed from an elastic material (Column 2 lines 3-10,

examiner interprets the reference to be related to Latex condoms). Latex is an elastic material.

With respect to claim 25 Stratton further discloses wherein in the first state, said outer portion is stretched by the frame such that the membrane is self retaining on the frame (figure 3a).

With respect to claim 26 Stratton further discloses wherein in the second state, said outer portion is contracted with respect to the first state (refer to respective diameters of user and frame as seen in figure 3a) and is located generally inwardly of the frame.

With respect to claim 27 Stratton further discloses wherein the outer surface of the frame is shaped to define a seat for the outer portion of the membrane (refer to ring member 201 being seated in the channel of the frame in figure 3a).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stratton (US5437286).

With respect to claim 23 Stratton discloses the invention as claimed except explicitly wherein the outer surface of the frame is concave in transverse cross-sectional profile to define a seat for the outer portion of the membrane. Stratton discloses wherein the outer surface of the frame is concave to define a seat for the outer portion of the membrane (refer to 201 seated in the channel in figure 3a) but nota “ transverse cross-sectional profile”.

It would have been obvious to one of ordinary skill to rearrange the channel portion of the frame into any position including that as claimed. It has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

3. Claims 1-13,16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ulert (US4867268) in view of Stratton (US5437286).

With respect to claim 1 Ulert discloses an apparatus for dispensing a cover device (20 in figure 4 is apparatus, 12 in figure 4 is cover), the cover device comprising a membrane (11 in figure 1), the apparatus comprising: a magazine for storing at least one cover device, the magazine having a mouth (24 in figure 5) through which the at least one cover device may be dispensed.

Ulert does not disclose wherein the cover device comprises both a frame and a membrane, the cover device being actuatable from a first state, in which an outer portion of the membrane is seated on an outer surface of the frame such that the frame holds the membrane in a generally deployed state, and a second state in which the outer portion of the membrane is located generally inwardly of its seated position, the

apparatus comprising means for actuating the at least one stored device from the first to the second state.

Stratton discloses a cover device (100 in figures 1a and 1 b) wherein the cover device comprises a frame (300 in figure 2b) and a membrane (200 in figure 1a see also figure 4), the cover device being actuatable from a first state in which an outer portion of the membrane is seated on an outer surface of the frame (the outer portion of the membrane includes the ring 201F in figure 2a and is on the outer surface of the frame, including the curved channel like portion) such that the frame hold the membrane in a generally deployed state, and a second state in which the outer portion of the membrane is located generally inwardly of its seated position (wherein the ring is smaller in diameter once it is donned by the user refer to figure 3a for respective diameters).

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of Stratton to use a membranous cover that is deployed by a frame with the dispensing apparatus of Ulert.

The Motivation for doing so would have been to simplify the attachment of the cover to the device to be covered, and insure a tight fit to prevent contamination.

In using a cover including a frame as taught by Stratton with the dispensing apparatus of Ulert, the mouth of Ulert would hold the frame stationary and thus provide means for actuating the cover from the first state to the second state.

With respect to claim 2 Ulert further discloses wherein said actuating means (including spring 23 and mouth 24) actuates the at least one stored cover device from

the first state to the second state upon movement of said at least one stored cover device into the magazine (The force of the spring and the resistance of the mouth part 24 would force the frame and the membrane to move in such a manner as to deploy the membrane from the frame when the device to be covered was inserted into the cover device refer also to figure 3a of Stratton).

With respect to claim 3 Ulert further discloses further comprising an actuating mechanism (23 in figure 4) to urge the at least one cover device towards the mouth.

With respect to claim 4 Ulert further discloses wherein said actuating mechanism comprises a platform (25 in figure 4) mounted on a spring (23 in figure 4) the spring being biased to urge the platform towards the mouth.

With respect to claim 5 Ulert further discloses a retaining lip (portion of 24 refer to figure 5) provided around at least part of the mouth, the retaining lip extending inwardly of the mouth.

With respect to claim 6 Ulert further discloses wherein said retaining lip is dimensioned to engage with, during use, the outer portion of the cover device nearest the mouth (see figure 5) when in said first state, thereby retaining said cover device in the apparatus, and to allow said cover device to be removed from the apparatus when in the second state. The apparatus of Ulert, including the retaining lip retains the cover during installation and allows removal once the cover is installed, when applied to the cover device of Stratton this corresponds to the first and second states.

With respect to claim 7 Ulert further discloses wherein said actuating means comprises means for dislodging the outer portion of the membrane from its seat on the

frame. Ulert discloses an actuating means in the spring and platform (24 and 25 in figure 4 respectively) this provides an upward force which when applied to the membrane of Stratton will dislodge the membrane in the same manner as the force applied to dislodge the ring portion of the membrane<sup>3</sup> from the cover in the intended use of Stratton's cover (see figure 3a).

With respect to claim 8 Ulert further discloses wherein a dislodging means (refer to embodiment of figure 11a) that is actuatable between a dislodging means and a deflected state.

At the time of the invention it would have been obvious to one of ordinary skill in the art to use the teachings to allow for a dislodging means that is selectively useable to ensure dislodging only under the desired conditions.

With respect to claim 9 Ulert further discloses wherein said dislodging means is actuatable from said dislodging state to said deflected state by passage of a cover device moving towards said mouth (refer to figures 11a and 11b).

The dislodging and deflected states of Ulert are controlled by the passage of the cover upward (Column 6 lines 5-35).

With respect to claim 10 Ulert further discloses wherein said dislodging means is biased to adopt the dislodging state (Column 6 lines 5-35, namely that the spring pushing the cover biases the arm into the position which hold the cover in place, and thus dislodges when applied to the cover of Stratton).

With respect to claim 11 Ulert further discloses wherein said dislodging means comprises at least one projection (41 in figures 11A and 11B) extending away from an interior surface of the magazine and being spaced apart from the mouth.

With respect to claim 12 Ulert further discloses wherein the spacing between the at least one projection and the mouth is such as to accommodate, during use, a single cover device between the at least one projection and the mouth (see figures 11A and B).

With respect to claim 13 Ulert further discloses wherein said at least one projection (41 in figure 11A) extends obliquely from the interior surface of the magazine in a direction generally towards the mouth (refer to figure 11A).

With respect to claim 16 Ulert further discloses wherein the spacing between the at least one projection and the mouth is such as to accommodate, during use, a single cover device between the at least one projection and the mouth (see figures 11A and B).

With respect to claim 17 Ulert further discloses wherein the apparatus contains at least one of said cover devices (refer to figure 4 and 11A).

With respect to claim 18 Ulert (embodiment of figures 13a-D) further discloses further comprising a collar (outer section in 13A shown in detail in figure 13D), the magazine (element 36 in figure 13B) being movable with respect to the collar in a first direction, and wherein the collar carries an actuating means (namely that the collar carries the groove for raising the covers into place, to be actuated as described in claim 1).

Ulert (embodiment of figure 4) as modified by Stratton discloses wherein the actuating means actuates the at least one stored cover device from the first state to the second state (as described in claim 1), this would occur during the movement of the magazine in said first direction when applying the teachings of Ulert embodiment of figures 13.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of Ulert to provide a collar with the actuating means with the embodiment of figure 4 of Ulert as modified by Stratton to ensure the actuation of the cover by the user and prevent dislodging of the covers from the magazine unintentionally.

With respect to claim 20 Ulert further discloses wherein said collar is located at least partially around the external periphery of the magazine (refer to figure 13 A column 6 line 52- Column 7 line 18).

4. Claims 14-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ulert (US4867268) in view of Stratton (US5437286) as applied to claims 11 and 18 above, and further in view of Janz (US5014878).

With respect to claim 14 Ulert as modified discloses the invention as claimed except wherein at least a part of said projections are formed from a flexible resilient material.

Janz discloses an article dispensing apparatus in which flexible resilient projections (elements 9-11 in figures 2A-2C ) are used to retain the article within the magazine in a state ready for use, until a user dispenses the article.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of Janz to use resilient flexible projections with the dispensing apparatus of Ulert as modified to provide a simple to manufacture and install retention mechanism.

With respect to claim 15 Janz further discloses wherein said at least one projection is carried by a ring (see figures 3 and 5), the ring being seated on a shoulder formed at the interior surface of the magazine (refer to figure 3).

With respect to claim 19 Janz further discloses wherein resilient biasing means (elements 9-11 in figures 2A-2C) are provided between a collar (20 in figure 3) and a magazine (15 in figure 1 and figure 3), the resilient biasing means being arranged to urge said magazine in a second direction, said second direction generally opposite to a first dispensing direction.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of Janz to provide a resilient means to counter a dispensing means with the magazine of Ulert as modified to prevent undesired dispensing of the articles.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FORREST M. PHILLIPS whose telephone number is

(571)272-9020. The examiner can normally be reached on Monday through Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Benson can be reached on 5712722227. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. M. P./  
Examiner, Art Unit 2837

/Walter Benson/  
Supervisory Patent Examiner, Art Unit 2837